

in connection with any such land use permits and other approvals necessary for implementation of such Permitted Uses on the New Campus; provided, however that such limitation shall not apply to different or expanded uses on the New Campus; provided, further that such limitation shall not apply to Port's discretionary authority as lead agency or otherwise in pursuing CEQA compliance. Similarly, during the same period, BFG shall not oppose, challenge or seek conditions or mitigation measures in connection with annexation of the BFG Property into the Port's Master Plan, or in connection with land use permits and other approvals necessary for development of the South Campus consistent with the Port's Master Plan, including industrial, commercial, hotel, waterfront, open space and recreational uses.

#### **6.4 Port and City/Agency Agreements Regarding South Campus Development.**

**6.4.1 In General.** Port and City/Agency agree that one of the primary purposes of this Agreement is to facilitate the redevelopment of the South Campus to its highest and best use in a manner consistent with the Port's "Industrial Business Park" land use designation. Towards that end, subject to the restrictions contained in Sections 4, 6 and 7 of this Agreement, Port, City and Agency agree to work together to encourage the redevelopment of the South Campus and to limit uses of the existing South Campus improvements beyond the Relocation Period to short term interim uses.

**6.4.2 Master Plan Amendment.** Port agrees to expeditiously process and present for Port Board approval a Master Plan Amendment for the South Campus which imposes the Port's existing "Industrial Business Park" land use designation thereon. Port staff agrees to exercise best efforts to complete the process by no later than May 1, 2001.

**6.4.3 RFP Process and Project Approval.** Prior to issuance of a Request for Proposal ("RFP") with respect to the South Campus, Port staff shall meet and confer with City/Agency staff in order to develop an RFP for the South Campus and the Bayfront generally to be issued by the Port in soliciting developer interest in the South Campus. Port agrees to expeditiously issue such RFP and diligently process responsive development proposals obtained with respect thereto. In addition, Port staff shall meet and confer with City/Agency staff to discuss mutual goals and concerns prior to Port staff's recommending to the Board of Port Commissioners approval of a specific project or projects for the South Campus. At City/Agency request, Port shall also schedule with the City Council/Agency Board joint public hearings on any proposed project for purposes of considering City/Council/Agency Board and public input on such project. Notwithstanding the foregoing, the Port shall reserve, to the maximum extent permitted by law, sole discretionary land use approval over South Campus development.

**6.5 Covered Areas.** The two (2) blacked-out areas marked on the map attached as Exhibit E are the "Covered Areas." After completion of the site characterization to be conducted for the South Campus, and prior to Closing, the Port and BFG shall meet and confer to consider mutually agreeable revisions (if any) to the Covered Areas. The Covered Areas shall be incorporated into any RFP(s) for the South Campus and the Bayfront issued by the Port to the extent such RFP(s) may affect one (or more) of the Covered Areas. The RFP(s) will be prepared

in a manner to encourage developers to avoid any penetration of existing soils within the Covered Areas by either: (i) avoiding development in Covered Areas; or (ii) developing above-ground Structures within the Covered Areas which do not involve any penetration of the soils, including, without limitation, buildings with slab-on-grade foundations, roads, sidewalks or parking areas. Port shall meet and confer with developers to consider appropriate modifications to any Development Plan, or portions thereof, to avoid penetration of the soil within the Covered Areas, and Port shall advise BFG of any development constraints which may require soil penetration within any Covered Areas. Following the submittal of the above-referenced RFP(s) and Port's reasonable attempts to modify any Development Plan (following meetings with the developer and consulting with BFG) to avoid soil penetration within any Covered Area, to the extent that the avoidance of soil penetration in or under the Covered Areas causes a material, adverse impact on the Development Plan or the financing of such Development Plan, then South Campus Environmental Costs associated with necessary Environmental Remediation Activities within the Covered Areas shall be allocated pursuant to Sections 7.2.1 and 7.2.2, below. Notwithstanding the foregoing, nothing herein shall preclude installation of below-ground utilities in connection with development within Covered Areas of above-ground structures that do not involve penetration of the soils, and any South Campus Environmental Costs associated with Environmental Remediation Activities arising out of such installation of below-ground utilities shall be allocated pursuant to Sections 7.2.1 and 7.2.2, below.

## **Section 7. ENVIRONMENTAL MANAGEMENT**

Redevelopment of the Bayfront may require investigation, management and remediation of environmental conditions. Terms and conditions concerning environmental investigation, management, remediation and cost responsibility are set out below.

### **7.1 General Principles.**

**7.1.1 Cooperation.** The parties recognize the paramount importance of maintaining a cooperative relationship to achieve effective implementation of the environmental management provisions of this Section 7. To this end, the parties will maintain regular, periodic communications among those involved in implementing Section 7. Regular meetings will be held. The parties will meet and confer in order to develop mutually agreeable positions to present to agencies and other third parties in implementing this Agreement. Implementing measures to help assure the maintenance of this cooperative relationship are set out in Section 7.5 below.

**7.1.2 Development Objectives.** The Port desires to provide for timely development of the South Campus and, to that end, the parties agree that development activities may commence during the Relocation Period, provided that such activities do not interfere with BFG operations and relocation activities. If Port and BFG agree in advance to such development activities, and if such activities adversely affect BFG's operations or relocation activities, Port shall compensate BFG for such adverse effects.

**7.1.3 Risk-Based Standards.** The parties agree that Environmental Remediation Activities implemented pursuant to this Agreement shall be based on risk-based decisionmaking and shall utilize the most cost-effective, risk-based, industrial use

remediation standards and techniques possible to implement Environmental Remediation Activities.

**7.1.4 Environmental Objectives.** The parties agree that Environmental Remediation Activities will be designed to facilitate development consistent with the Port's Master Plan utilizing risk-based standards.

**7.1.5 Shared Costs.** As more particularly described in Sections 7.2 and 7.3 below, South Campus Environmental Costs to remediate South Campus Environmental Conditions in order to implement Port first-time post-Closing Development Plans under this Agreement are shared costs, the allocation of which is described in Section 7.2.2 below.

**7.1.6 Manifests.** Any hazardous waste manifest required to be executed by any party in relation to Environmental Remediation Activities on the South Campus or on the New Campus shall be executed by the party or parties responsible for causing the Environmental Condition, rather than the party or parties responsible for the Environmental Costs or environmental management with respect to such Environmental Condition. If, after a diligent attempt to do so, the party or parties responsible for causing the Environmental Condition cannot be identified, BFG shall execute the pertinent hazardous waste manifest. Nothing in this Section 7.1.6 shall alter or amend any provisions of this Agreement regarding allocation of Environmental Costs.

**7.1.7 Management.** Whenever this Agreement provides that Remediation Activities are to be undertaken pursuant to joint decision making, such Remediation Activities shall be effectuated according to the joint decisions of BFG and the Port, irrespective of which party has current management responsibility for such Remediation Activities.

**7.1.8 No Waiver.** Nothing in this Agreement shall constitute a waiver of rights or remedies pursuant to contract or applicable laws with respect to Environmental Conditions in, on, or under property other than the New Campus or South Campus.

## **7.2 Allocation of Environmental Costs: South Campus.**

**7.2.1 General.** Effective as of the date of this Agreement, and subject to the conditions set out in Sections 7.2.3 through 7.2.14 below, BFG and the Port shall share, in the manner described in Section 7.2.2 below, all costs, fees, out-of-pocket expenses, losses, liabilities and damages (collectively, "**Costs**") resulting from, concerning, or arising out of or in connection with: (i) "**Environmental Conditions**" in, on, from or under the South Campus (including, without limitation, the buildings on the South Campus) regardless of origin within the South Campus or outside the South Campus (collectively, "**South Campus Environmental Conditions**"), (ii) "**Environmental Releases**" in, on, from or under the South Campus (including, without limitation, the buildings on the South Campus) (collectively "**South Campus Environmental Releases**"), (iii) "**Environmental Remediation Activities**" in, on, around, from or under the South Campus (including, without limitation, the buildings on the

South Campus) (collectively "***South Campus Environmental Remediation Activities***"), or (iv) "***Environmental Claims***" resulting from, concerning, or arising out of or in connection with South Campus Environmental Conditions, South Campus Environmental Releases or South Campus Environmental Remediation Activities (collectively, "***South Campus Environmental Claims***"). The Costs resulting from, concerning or arising out of or in connection with South Campus Environmental Conditions, South Campus Environmental Releases, South Campus Environmental Remediation Activities and South Campus Environmental Claims are defined to be "***South Campus Environmental Costs.***" The costs of technical consultants and legal counsel selected jointly by BFG and the Port pursuant to Section 7.3.1(b) below shall be allocated pursuant to Section 7.2.2 below.

**7.2.2 Allocation.** The allocation of South Campus Environmental Costs is as follows:

(a) For South Campus Environmental Costs from \$0 to \$3 million, BFG is liable for 50 percent of such Costs and the Port is liable for 50 percent of such Costs.

(b) For South Campus Environmental Costs from greater than \$3 million to \$4 million, BFG is liable for 40 percent of such Costs and the Port is liable for 60 percent of such Costs.

(c) For South Campus Environmental Costs greater than \$4 million to \$5 million, BFG is liable for 30 percent of such costs and the Port is liable for 70 percent of such Costs.

(d) For South Campus Environmental Costs greater than \$5 million, BFG is liable for 100 percent of such Costs.

BFG shall be responsible for maintaining records of South Campus Environmental Costs so that this allocation can be effectuated. Port shall have the right to review and photocopy such records during normal business hours, upon reasonable advance notice to BFG.

**7.2.3 Costs After Transfer.** After transfer of ownership of the BFG Property to the Port, BFG shall not be liable for, and the Port shall be solely responsible for, any South Campus Environmental Costs which result from, concern, or arise out of or in connection with South Campus Environmental Conditions that occur after such transfer, whether as a result of actions by Port, by subsequent owners or operators of South Campus or by any third party; provided, however, that subject to Section 7.2.14, BFG shall remain solely responsible for any South Campus Environmental Costs that result from, concern, or arise out of or in connection with South Campus Environmental Conditions that occur in whole or in part as a result of BFG's activities, but only to the extent of such BFG activities, after such transfer and until BFG vacates the South Campus or the portion thereof to which such costs pertain.

**7.2.4 Costs Associated With Importation of Dredged Material.** BFG shall not be responsible for South Campus Environmental Costs resulting from or arising out of or in connection with importation of dredged or fill material containing Hazardous Substances by or at the direction of any party other than BFG whether such importation occurs prior to or subsequent to the execution of this Agreement.

**7.2.5 Costs Associated With Dredging.** Dredging by the Port in San Diego Bay and in the Chula Vista Yacht Harbor shall not result in any obligations under this Agreement. If Port dredging activities cause a water channel to be cut into the South Campus, the New Campus, or any other Bayfront property or cause a material change in the shoreline, the Port shall be solely responsible for any South Campus Environmental Costs that result from such water channel or shoreline dredging. If any other Port dredging activities on the South Campus, New Campus, or any other Bayfront property result in South Campus Environmental Costs due to changes in groundwater flow or to the shoreline beneath or adjacent to the South Campus, these South Campus Environmental Costs shall be allocated pursuant to Sections 7.2.1 and 7.2.2 above. Digging or trenching in connection with installation of underground utilities shall not be construed as dredging, and shall not constitute an Environmental Release for which City, Port or BFG may be liable with respect to any impact upon soils or groundwater. Any South Campus Environmental Costs caused by digging or trenching on the South Campus by City or Port in connection with installation of underground utilities shall be allocated pursuant to Section 7.2.1 and Section 7.2.2 above.

**7.2.6 Costs Associated With Irrigation and Ponds.** The Port will require any South Campus developer to meet and confer with BFG concerning any planned irrigation activities and/or ponds on South Campus and to consider any comments BFG may have concerning such activities or ponds. After such meeting:

(a) with respect to developer irrigation activities, if BFG and the Port determine that reasonable protective measures should be undertaken to address potential impacts to soils or groundwater or to South Campus Environmental Remediation Activities, the developer will be required to install those protective measures and the costs of those protective measures will be allocated pursuant to Sections 7.2.1 and 7.2.2 above;

(b) with respect to ponds, the developer will be required to install lined ponds and BFG shall bear no responsibility for the costs of such liners;

(c) provided, however, that developer will not be precluded from implementing a reasonable industry standard irrigation plan for the South Campus and this Southern California Region.

**7.2.7 Costs Associated With Grading.** If any grading activities cause South Campus Environmental Costs, these costs will be allocated pursuant to Sections 7.2.1 and 7.2.2 above; provided, however, if the Port conducts grading activities without consultation with and receiving written approval by BFG within thirty (30) days (which approval shall not be unreasonably withheld) and these grading activities cause South

Campus Environmental Costs, then the Port shall be solely responsible for such South Campus Environmental Costs.

**7.2.8 Costs in Excess of Industrial Use Standards.** In no event shall BFG be responsible for any South Campus Environmental Costs that exceed the costs required to perform South Campus Environmental Remediation Activities to achieve Industrial Use Standards for the South Campus and the Port shall bear and be responsible for the incremental South Campus Environmental Costs of such South Campus Environmental Remediation Activities in excess of Industrial Use Standards.

**7.2.9 Costs Associated With Underground Storage Tanks Costs.** Any Environmental Costs incurred for the closure and removal of underground storage tanks, and their associated piping and dispensers, that are subject to regulation pursuant to Cal. Health & Safety Code § 25280 et seq. ("*Underground Storage of Hazardous Substances*") and 23 Cal. Code Regs. §§ 2610 et seq. ("*Underground Tank Regulations*") (hereafter "*Underground Storage Tanks*") located on the South Campus shall be considered South Campus Environmental Costs subject to allocation in accordance with Sections 7.2.1 and 7.2.2 above. The parties agree that if Underground Storage Tanks exist on the South Campus that qualify under the Underground Storage Tank Cleanup Fund established pursuant to Health & Safety Code §§ 25299.10 et seq., then the Port and BFG shall submit and jointly pursue the processing of the application(s) to the State Water Resources Control Board and the costs of preparing and pursuing this application (or applications) shall be equally shared by BFG and the Port. The Port and BFG shall submit applications to any similar fund established by a public agency or governmental body for remediation, closure and/or removal of Underground Storage Tanks, and the costs of preparing and pursuing these applications shall be equally shared by BFG and the Port. Any reimbursement received by either BFG or the Port from the Underground Storage Tank Fund, and any similar funds established for remediation, closure and/or removal of Underground Storage Tanks will be paid to BFG and the Port in proportion to their respective shares of such expenses pursuant to Sections 7.2.1 and 7.2.2 above.

**7.2.10 Costs Associated With Demolition.** The Port shall be responsible for the dismantling, demolition, and removal (collectively "*Demolition*") of any structures (excluding Underground Storage Tanks) and all associated materials (including without limitation asbestos, lead-based paint, and light ballasts) located on the South Campus, including the Demolition of, without limitation, buildings, pads, foundations, parking lots, roads, sewers, storm sewers, utility trenches, and fences (collectively "*Structures*"); provided, however, if any South Campus Structures are contaminated with materials other than asbestos, lead-based paint, and/or light ballasts, the Port shall meet and confer with BFG concerning the handling and disposal of such contaminated Structures and any increased Demolition costs associated with those contaminated materials shall be allocated pursuant to Sections 7.2.1 and 7.2.2 above.

**7.2.11 Costs Associated with Groundwater Monitoring.** If the Port becomes responsible for the management of groundwater monitoring in wells located on the South Campus pursuant to Section 7.3.1(a)(1), the Environmental Costs required to

perform the sampling, testing, and reporting activities described in Section 7.3.1(a)(1) shall be allocated pursuant to Sections 7.2.1 and 7.2.2 above.

**7.2.12 Costs Associated With Construction Dewatering.** Any increased South Campus Environmental Costs associated with temporary construction dewatering activities shall be allocated pursuant to Sections 7.2.1 and 7.2.2 above. If permanent dewatering operations are permitted to occur by the Regional Water Quality Control Board, San Diego Region, and if the Port allows a developer to install and operate permanent dewatering operations on the South Campus, any increased South Campus Environmental Costs that result from, arise out of or in connection with such permanent dewatering operations shall be borne solely by the Port.

**7.2.13 Cost Limitation.** Irrespective of whether BFG or the Port has management responsibility pursuant to Section 7.3, BFG and the Port shall not be responsible under this Agreement for any South Campus Environmental Costs except as expressly provided for in Sections 7.2 and 7.3.

**7.2.14 Contamination Discovery Cutoff.** To the extent that BFG is liable for South Campus Environmental Conditions, it shall be liable only for South Campus Environmental Conditions that are discovered within 15 years after Closing, except that BFG's liability for South Campus Environmental Conditions that exist on any portion of the South Campus shall be satisfied upon completion, pursuant to a Development Plan, of the Port first-time, post Closing development of that portion of the South Campus; provided, however, that, notwithstanding any prior termination of BFG's responsibility under Section 7 for South Campus Environmental Remediation Activities or South Campus Environmental Costs, BFG shall also be liable for any South Campus Environmental Condition that is discovered within an area where such first-time development has been completed if that Environmental Condition is discovered within the aforesaid 15 years and requires remediation to comply with the Industrial Use Standard that applied to that first-time development, in which case responsibility for the management and cost of such remediation shall be allocated pursuant to Section 7.3.1(a)(4). For South Campus Environmental Conditions that come within the discovery period established by this Section 7.2.14, BFG shall have management responsibility for such South Campus Environmental Conditions until its responsibility for such Conditions is terminated or a particular exemption applies in accordance with Section 7.3.1 and the South Campus Environmental Costs incurred in meeting this responsibility shall be allocated pursuant to Sections 7.2.1, 7.2.2 and 7.3.

### **7.3 Management of Environmental Matters: South Campus.**

#### **7.3.1 Management Responsibilities and Activities.**

(a) **General.** BFG shall manage South Campus Environmental Remediation Activities until no longer required to do so as provided below, at which time the Port shall become solely responsible for management of South Campus Environmental Remediation Activities:

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- (1) No Further Action Letter, Certificate of Completion, or Similar Document. If South Campus Environmental Remediation Activities are undertaken pursuant to a Development Plan under government agency oversight, BFG management responsibility shall terminate upon the issuance of a no further action letter, certification of completion, or similar document by the oversight agency, and, furthermore, BFG's responsibility under this Section 7 for that aspect of South Campus Environmental Remediation Activities and for those South Campus Environmental Costs shall terminate and be satisfied upon such event. Not by way of limitation of the foregoing, if the performance of South Campus Environmental Remediation Activities results in a government agency determination that the only remaining tasks to be performed are the periodic sampling of groundwater monitoring wells, the testing of samples from the monitoring wells, and the preparation and submission to the agency of reports on the results of such sampling and testing, then the Port shall assume responsibility for conducting this sampling, testing, and reporting and the costs of such activities shall be allocated pursuant to Sections 7.2.1 and 7.2.2 above; provided, however, that if as a result of such groundwater monitoring additional South Campus Environmental Remediation Activities are required by a government agency, then:
- (i) BFG shall have management responsibility for such Remediation Activities if the Remediation Activities are for conditions that occurred as a result of BFG activities, but only to the extent of such BFG activities, and the costs of such Remediation Activities shall be allocated pursuant to Sections 7.2.1 and 7.2.2 above; and
  - (ii) the Port shall have management responsibility for and be responsible for the costs of such Remediation Activities if the Remediation Activities are for conditions that occurred as a result of Port activities, but only to the extent of such Port activities.
- (2) Investigation Reports. If the only South Campus Environmental Remediation Activities required by the appropriate government oversight agency are investigation activities, BFG's management responsibility for such South Campus Environmental Remediation Activities so required shall terminate by a letter documenting submission of the final report of investigation to the oversight agency, and, furthermore, BFG's responsibility under this Section 7 for South Campus Environmental Costs shall terminate and be satisfied to the extent of such required investigation activities. This condition shall conclusively be determined to have



occurred if after the passage of one year from the submission of the final report of investigation to the oversight agency, the oversight agency has not required the performance of any additional South Campus Environmental Remediation Activity.

- (3) Discrete Project Approvals. In the event that South Campus Environmental Remediation Activities occur in stages or discrete elements or parcels, then the termination of BFG's management responsibility pursuant to Sections 7.3.1(a)(1) or 7.3.1(a)(2) shall occur for each such stage or element or parcel as documented for or approved by the oversight agency by the methods described in Sections 7.3.1(a)(1) or 7.3.1(a)(2), above, and, furthermore, BFG's responsibility under this Section 7 for South Campus Environmental Costs shall terminate and be satisfied to the extent of such stage or element or parcel.
- (4) Reopener and Subsequent Event Provisions. If any Section 7.3.1(a)(1)-(3) agency documentation contains a reopener provision and the condition occurs that triggers the reopener provision or a discovery of a South Campus Environmental Condition occurs pursuant to Section 7.2.14, and either or both of these events requires the performance of additional South Campus Environmental Remediation Activities, then:
  - (i) if such an event occurs as a result of BFG activities, BFG shall have management responsibility for such Remediation Activities, but only to the extent of such BFG activities, until completion of such management responsibilities is achieved in a manner provided for by Sections 7.3.1(a)(1), 7.3.1(a)(2), or 7.3.1(a)(3) above, and South Campus Environmental Costs for such Remediation Activities shall be allocated pursuant to Sections 7.2.1 and 7.2.2 above; and
  - (ii) if such an event occurs as a result of Port activities, the Port shall have management responsibility and shall be responsible for the costs of such Remediation Activities, but only to the extent of such Port activities.
- (5) BFG Post-Transfer Responsibilities. After transfer of ownership of the BFG Property to the Port, BFG shall have no management responsibility (or any other obligation or responsibility, as provided in Section 7.2.3) for any South Campus Environmental Remediation Activities that result from, concern or arise from or in connection with any South Campus Environmental Condition which occurs after such transfer of BFG Property to the Port; provided, however, that, in addition to its responsibilities under Sections 7.3.1(a)(1)-(4) above, BFG shall remain solely

responsible for any South Campus Environmental Costs that result directly or indirectly from activities of BFG, but only in proportion to BFG's activities, after such transfer and until BFG vacates the South Campus.

- (6) Port Post-Transfer Responsibilities. Except for the management obligations of BFG expressly provided for in Sections 7.3.1(a)(1)-(5) above, after transfer of ownership of the BFG Property to the Port, management responsibility for South Campus Environmental Conditions, South Campus Environmental Releases, and South Campus Environmental Remediation Activities is to be borne solely by the Port.
- (7) No BFG Management Responsibilities Regarding Standards in Excess of Industrial Use Standards. Notwithstanding the provisions of Sections 7.3.1(a)(1)-(5) above, BFG shall have no management responsibility for any South Campus Environmental Remediation Activities required to achieve standards in excess of Industrial Use Standards for the South Campus; provided, however, that until termination of BFG management responsibility pursuant to Sections 7.3.1(a)(1)-(5) above, BFG may elect to manage, to the extent of any writing signed by an officer of BFG and by giving 30-days' written notice thereof to the Port, any such South Campus Environmental Remediation Activities required to achieve standards in excess of Industrial Use Standards for the South Campus.
- (b) **Selection of Technical and Legal Consultants.** The technical consultants and legal counsel retained by the Port and BFG for implementing South Campus Environmental Remediation Activities shall be selected jointly by the Port and BFG, after meeting and conferring; provided, however, that neither the Port nor BFG is precluded from retaining technical consultants and legal counsel of its own, at its own expense, to assist it in implementing this Agreement.
- (c) **Demolition Activities.** The Demolition of any Structures located on the South Campus shall be the responsibility of the Port and shall be performed by the Port; provided, however, that before the Port removes any soils, except for residual soils that are directly associated with the Structures and are necessarily removed with the Structures, the Port shall consult with BFG concerning such soils. If the Port demolishes any Structure that results in exposing contaminated soils beneath such Structure, the Port shall place a cap (temporary or otherwise) over such soils until the Port begins the process of constructing new Structures in the area of the Structure(s) to be demolished in accordance with a Development Plan. If the Port chooses to demolish a Structure earlier than would be necessary under an applicable Development Plan, then the Port

shall be responsible for any increased South Campus Environmental Costs that result from such early Demolition action.

- (d) **Closure of Underground Storage Tanks.** Closure and removal of any Underground Storage Tanks located on the South Campus shall be performed by BFG. An application or applications to the Underground Storage Tank Cleanup Fund or any other similar fund shall be submitted and pursued by BFG and the Port when required by Section 7.2.9 above.
- (e) **Irrigation Activities.** The Port shall not be precluded from implementing a reasonable industry standard irrigation plan for the South Campus and this Southern California Region.
- (f) **Well Installation, Operation, Maintenance and Closure.**
  - (1) To carry out the management provisions of this Section 7.3, BFG may need to install, operate, maintain or close one or more wells to monitor or extract groundwater or soil vapor. After receipt of reasonable advance notice from BFG, the Port and the City agree to grant, on reasonable terms, access to portions of the property within the Bayfront, or adjacent thereto, under their control, including the BFG Property after its transfer, for the installation, operation, maintenance and closure of groundwater monitoring, soil vapor or extraction wells.
  - (2) Consistent with its cooperation responsibilities under Section 7.5 below, BFG shall not install, operate, maintain or close a groundwater monitoring, soil vapor, or extraction well in a manner that unreasonably interferes with the activities or property of the Port or its tenants
- (g) **Port Bona Fide Developer Exemption**
  - (1) **Criteria.** This exemption from Section 7.3 management of environmental matters requirements shall apply if the following criteria are met:
    - (i) A bona fide and viable development plan exists for the South Campus or a portion of the South Campus and the Board of Port Commissioners has selected, in accordance with its established and normally applicable procedures, a qualified developer to implement this development plan (collectively "*Development Plan*");
    - (ii) The Development Plan requires the implementation of South Campus Environmental Remediation Activities in order to achieve the land use(s) established by the Development Plan;

- (iii) More than one remediation option, other than the no action option, exists to implement such South Campus Environmental Remediation Activities; and
  - (iv) The BFG-selected South Campus Environmental Remediation Activity would by itself materially adversely affect implementation of the Development Plan by, for example, materially affecting the time of completion or materially affecting the scope of the development.
- (2) **Decisions No Greater Than \$5.6 Million.** If at the time the above criteria are met, South Campus Environmental Costs have not exceeded \$5.6 million (and implementation of the South Campus Environmental Remediation Activity desired by the Port would not cause such costs to exceed \$5.6 million), the Port may select the least costly South Campus Environmental Remediation Activity that will implement the Development Plan while reasonably eliminating the material adverse impact to the development project.
- (3) **Decisions Above \$5.6 Million But No Greater Than \$7 Million.** If at the time the above criteria are met, South Campus Environmental Costs have exceeded \$5.6 million but are no greater than \$7 million (or implementation of the South Campus Environmental Remediation Activity desired by the Port would cause such costs to exceed \$5.6 million but not to exceed \$7 million), then the Port shall not have the right to select the South Campus Environmental Remediation Activity without BFG's concurrence. In such event, the Port and BFG shall meet and confer in an attempt to select a mutually agreeable South Campus Environmental Remediation Activity that complies with Section 7.1.3. If the Port and BFG are unable to agree on a South Campus Environmental Remediation Activity, the matter shall be submitted to binding arbitration pursuant to Section 9.5.3 below.
- (4) **Decisions Above \$7 Million.** If at the time the above criteria are met, South Campus Environmental Costs have exceeded \$7 million (or implementation of the South Campus Environmental Remediation Activity desired by the Port would cause such costs to exceed \$7 million), then the Port shall not have the right to select the South Campus Environmental Remediation Activity, and BFG shall have the sole and exclusive right to select the South Campus Environmental Remediation Activity.
- (5) **Implementation Costs.** The costs incurred in implementing the South Campus Environmental Remediation Activity selected under this Section 7.3.1(g) shall be South Campus Environmental Costs,

allocated pursuant to Sections 7.2.1 and 7.2.2 above. The provisions of Sections 7.1, 7.2, 7.3, 7.5 and 7.6 shall apply to the implementation of the selected South Campus Environmental Remediation Activity except to the extent that those provisions are inconsistent with this Section 7.3.1(g).

**(h) Port-Directed Remediation**

- (1) This Section 7.3 (h) is an exemption from the provisions of Section 7.3 governing management of environmental matters.
- (2) The requirements of this Section 7.3(h) are as follows:

**FIRST:**

- (i) Within thirty (30) days following the demolition of any building on the South Campus, BFG shall commence an additional environmental evaluation (which may include, if appropriate, reasonable surface and subsurface investigation) in the area of the demolished building.
- (ii) Within ninety (90) days following the demolition, BFG in consultation with the Port shall prepare a plan for Environmental Remediation Activities for the pertinent area (or an explanation as to why no remediation is then necessary), and shall submit it to the Port for review.
- (iii) In the event the Port agrees with the proposed plan for Environmental Remediation Activities, then BFG shall submit such plan to the applicable environmental agencies for review and/or approval, and thereupon, within sixty (60) days following receipt of all required governmental approvals and permits, BFG shall commence the remediation.
- (iv) In the event the Port disagrees with the BFG proposal, then the Port may direct a different plan for Environmental Remediation Activities, provided that the estimated cost of such plan (together with all other activities directed by the Port under this Section 7.3 (h)) shall not exceed \$1,000,000. Thereupon, BFG shall submit such Port plan to the applicable environmental agencies for review and/or approval, and thereafter, within sixty (60) days following receipt of all required governmental approvals and permits, BFG shall commence the remediation described in the Port's plan.

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SECOND:

- (v) Within thirty (30) days following the delivery by the Port to BFG of the detailed schematic plans of the Port's approved developer, BFG shall commence an additional environmental evaluation which may include, if appropriate, reasonable surface and subsurface investigation in the areas where such plans call for the construction or installation of buildings or other improvements.
  - (vi) Within ninety (90) days following the receipt of such schematic plans, BFG in consultation with the Port shall prepare a plan for Environmental Remediation Activities for the aforesaid areas (or an explanation as to why no remediation is then necessary), and submit it to the Port for review.
  - (vii) In the event the Port agrees with the proposed plan for Environmental Remediation Activities, then BFG shall submit such plan to the applicable environmental agencies for review and/or approval, and thereupon, within sixty (60) days following receipt of all governmental approvals and permits, BFG shall commence the remediation.
  - (viii) In the event the Port disagrees with the BFG proposal, then the Port may direct a different plan for Environmental Remediation Activities, provided that the estimated cost of such plan (together with all other activities directed by the Port under this Section 7.3(h)) shall not exceed \$1,000,000. Thereupon, BFG shall submit such Port plan to the applicable environmental agencies for review and/or approval, and thereafter, within sixty (60) days following receipt of all required governmental approvals and permits, BFG shall commence the remediation described in the Port's plan.
- (3) The said \$1,000,000 shall be a shared cost pursuant to the allocation of South Campus Environmental Costs under Section 7.2.2, and shall also be counted for purposes of application of Section 7.3(g).

**7.4 Allocation of Environmental Costs and Management Responsibilities for Other Identified Properties.**

**7.4.1 Port Parcels and SDG&E Land North of H Street.**

(a) **Management Responsibility.** BFG shall have environmental management responsibility for performing Environmental Remediation Activities, if BFG determines that such activities are necessary, for the Port Parcels and that part of the SDG&E Land that is located north of H Street.

(b) **Cost Allocation.**

(1) Port Parcel No. 1.

(i) BFG shall not be responsible for any Environmental Costs relating to Port Parcel No. 1 that result from, concern or arise from or in connection with Environmental Conditions existing prior to BFG's ground lease of Port Parcel No. 1, and the Port shall be responsible for such Environmental Costs, provided, however, that the Port's responsibility for the costs of such Environmental Remediation Activities:

(A) shall be limited to those Environmental Remediation Activities necessary to achieve Industrial Use Standards,

(B) shall extend only until the types of requirements set out in Sections 7.3.1(a)(1)-(3) above are met by the Port; and

(C) if the agency documentation of the types of requirements set out in Sections 7.3.1(a)(1) - (3) above contains a reopener provision and the condition occurs that triggers the reopener provision or a discovery of an Environmental Condition occurs pursuant to Section 7.4.5, and either or both of these events requires the performance of Environmental Remediation Activities, then the Port shall be responsible for the Costs of such Environmental Remediation Activities in the proportion to the extent to which each, directly or indirectly, caused such Costs.

(ii) BFG shall be solely responsible for Environmental Costs relating to Port Parcel No. 1 that result from, concern, or arise from or in connection with Environmental Conditions caused by BFG or third parties that first occurred after BFG executed a ground lease for Port Parcel No. 1; provided, however, that BFG's responsibility for the costs of such Environmental Remediation Activities:

- (A) shall be limited to those Environmental Remediation Activities necessary to achieve Industrial Use Standards,
- (B) shall extend only until the types of requirements set out in Sections 7.3.1(a)(1)-(3) above are met by BFG, and
- (C) if the agency documentation pursuant to Sections 7.3.1(a)(1)-(3) above contains a reopener provision and the condition occurs that triggers the reopener provision or a discovery of an Environmental Condition occurs pursuant to Section 7.4.5, and either or both of these events requires the performance of Environmental Remediation Activities, then BFG shall be responsible for the costs of such Environmental Remediation Activities.

(2) Port Parcel No. 2 and SDG&E Land North of H Street. BFG shall not be responsible for any Environmental Costs relating to Port Parcel No. 2 or that portion of the SDG&E Land north of H Street that result from, concern, or arise from or in connection with Environmental Conditions existing prior to transfer of these properties to BFG and the Port shall be solely responsible for such Environmental Costs; provided, however, that the Port's responsibility for the costs of such Environmental Remediation Activities:

- (i) shall be limited to those Environmental Remediation Activities necessary to achieve Industrial Use Standards,
- (ii) shall extend only until the types of requirements set out in Sections 7.3.1(a)(1)-(3) above are met by the Port; and
- (iii) if the agency documentation of the types of requirements set out in Sections 7.3.1(a)(1)-(3) contains a reopener provision and the condition occurs that triggers the reopener provision or a discovery of an Environmental Condition occurs pursuant to Section 7.4.5, and either or both of these events requires the performance of Environmental Remediation Activities, then:
  - (A) for a condition that existed prior to transfer of the property to BFG, the Port shall be solely responsible for the costs of such Environmental Remediation Activities, and

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- (B) for a condition that occurs after transfer of the property to BFG, BFG shall be solely responsible for the costs of such Environmental Remediation Activities.

Provided, however, that any Environmental Costs which are incurred to remediate an Environmental Condition that exists in, on or under Port Parcel No. 2 or SDG&E Land North of H Street and that resulted from BFG activities, but only to the extent of such BFG activities, shall be costs that are allocated pursuant to Sections 7.2.1 and 7.2.2 above.

#### **7.4.2 Rados Parcel and Agency Parcel.**

(a) **Trigger.** Agency shall complete investigation and clean-up of Environmental Conditions in Rados and Agency parcel soils within the earlier of (1) six months of a request by BFG (or as soon as possible thereafter if the investigation and clean-up cannot be completed, despite Agency's diligent efforts, within such 6-month time period); or (2) the time required by an agency order directing remediation of the Rados and/or the Agency Parcel(s).

(b) **Scope of Responsibility.** Agency's management and remediation obligations shall be limited to soils.

(c) **Scope of Investigation.** Agency shall conduct a Phase II-type investigation, with a scope subject to BFG's reasonable approval to determine whether Environmental Conditions exist in soils on or beneath the Rados and Agency Parcels.

(d) **Cleanup.** Agency shall perform any necessary Environmental Remediation Activities based on risk-based decisionmaking to utilize the most cost-effective, risk-based remediation standards and techniques possible. The level of clean-up for which Agency shall be responsible shall be limited to that necessary to allow for the use of the parcels for parking, office, industrial or similar uses.

(e) **Cost Responsibility.** Agency shall be responsible for all costs of investigation and Environmental Remediation Activities as required by subsections (a) through (d) above. Agency shall not be responsible for Environmental Remediation Activities or Environmental Claims:

- (1) for contaminant conditions in groundwater;
- (2) for environmental conditions caused by BFG, its agents, representatives or independent contractors;
- (3) for environmental conditions caused after Closing, except for environmental conditions caused by the Agency in performing Environmental Remediation Activities or otherwise.

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**(f) Completion.** Agency shall exercise best efforts to obtain a No Further Action letter from the County (or other governmental oversight agency with jurisdiction) that determines that "no further action" is required at the two parcels with respect to Environmental Conditions of the soils. Agency's obligations under this Section 7.4.2 shall terminate with respect to any portion of the parcels for which Agency obtains such a No Further Action letter.

**7.4.3 Costs Associated With Dredged Material.** BFG shall not be responsible for Environmental Costs resulting from, or arising out of or in connection with importation of dredged or fill material containing Hazardous Substances by or at the direction of any party other than BFG onto the New Campus or any other Bayfront property (excluding the South Campus which is addressed in Section 7.2.4), whether such importation occurs prior to or subsequent to the execution of this Agreement.

**7.4.4 Costs Associated With Dredging.** Except for the cost exclusions associated with dredging activities set out in Section 7.2.5 above (which shall be equally applicable to the New Campus), if any other dredging activities on Bayfront property result in Environmental Costs associated with the New Campus due to changes in groundwater flow or to the shoreline beneath or adjacent to the New Campus, these Environmental Costs shall be allocated pursuant to Sections 7.2.1 and 7.2.2 above.

**7.4.5 Contamination Discovery Cutoff.** To the extent that Port and/or City/Agency are liable for Environmental Conditions on the New Campus, the Port and/or City/Agency shall be liable only for Environmental Conditions on the New Campus that are discovered within 15 years after Closing, except that the Port and/or the City's/Agency's liability shall be satisfied upon BFG's completion of first-time, post-Closing permanent development (which shall not include interim uses, such as parking or storage) of that portion of the New Campus; provided, however, that Port and/or City/Agency shall also be liable for any Environmental Condition that is discovered within an area where such first-time development has been completed if that Environmental Condition is discovered within the aforesaid 15 years and requires remediation to comply with the Industrial Use Standard that applied to that first-time development.

## **7.5 Other Terms and Conditions.**

### **7.5.1 Cooperation.**

(a) The parties agree to cooperate and coordinate in good faith and to use best efforts to achieve the most cost-effective, risk-based, industrial use remediation standards possible for the South Campus, the New Campus and any other Bayfront property.

(b) The parties agree to meet and confer and to cooperate in proposing and implementing any Environmental Remediation Activity developed pursuant to this Agreement.

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(c) With respect to activities on the South Campus and Port Parcels and SDG&E Land North of H Street:

- (1) BFG and the Port shall meet and confer, shall exchange information about successful applications of cost-effective, risk-based, and/or industrial use standards and other useful information, shall develop proposed least cost industrial use remediation plans for Port or third-party development proposals approved by the Board of Port Commissioners (including Development Plans for the South Campus) in order to match cost-effective environmental strategies with land-use development programs, and shall cooperate in presenting remediation proposals to relevant agencies.
- (2) BFG and the Port shall cooperate in good faith with each other regarding any communications or interactions with, or appearances before, agencies with oversight or other responsibility for the properties listed above. The goal is to reach agreement on the substance of the communication or the appearance. All written communications shall be sent to such agencies only after BFG and the Port have met and conferred regarding such communications and exchanged drafts of written communications for review and comment. All written communications and other documents shall be exchanged between BFG and the Port within a reasonable time prior to submission of the communication to allow for review and exchange of comments. All discussions between BFG and the Port regarding oral communications shall occur within a reasonable time prior to the communication with the agency. If emergency circumstances preclude such prior review, then the Port or BFG shall notify the other of the communication as soon as practicable thereafter and provide the other with a copy of any written communications. Final copies of any communication with an agency shall be sent to the other party. BFG and the Port shall meet and confer a reasonable time prior to making any appearance before or meeting with agencies with oversight responsibility for the properties listed above.

(d) With respect to activities on the Rados and Agency parcels:

- (1) BFG and the Agency shall meet and confer, shall exchange information about successful applications of cost-effective, risk-based, and/or industrial use standards and other useful information, shall develop proposed least cost industrial use remediation plans for development proposals contained in

development plans in order to match cost-effective environmental strategies with land-use development programs, and shall cooperate in presenting remediation proposals to relevant agencies.

- (2) BFG and the Agency shall cooperate in good faith with each other regarding any communications or interactions with, or appearances before, agencies with oversight or other responsibility for the properties listed above. The goal is to reach agreement on the substance of the communication or the appearance. All written communications shall be sent to such agencies only after BFG and the Agency have met and conferred regarding such communications and exchanged drafts of written communications for review and comment. All written communications and other documents shall be exchanged between BFG and the Agency within a reasonable time prior to submission of the communication to allow for review and exchange of comments. All discussions between BFG and the Agency regarding oral communications shall occur within a reasonable time prior to the communication with the agency. If emergency circumstances preclude such prior review, then the Agency or BFG shall notify the other of the communication as soon as practicable thereafter and provide the other with a copy of any written communications. Final copies of any communication with an agency shall be sent to the other party. BFG and the Agency shall meet and confer a reasonable time prior to making any appearance before or meeting with agencies with oversight responsibility for the properties listed above.

(e) With respect to the San Diego Regional Water Quality Control Board proceeding to redesignate the assigned beneficial uses of the aquifer beneath the South Campus and the New Campus, the parties will cooperate in good faith and use best efforts to achieve redesignation.

**7.5.2 Permitting.** Whenever a permit or approval of a government agency is necessary to fulfill any provision of Section 7, the parties shall cooperate in good faith to the maximum extent possible to secure such permit or approval.

**7.5.3 Plans.** Whenever Environmental Remediation Activities or Demolition activities are undertaken by any party, such party shall prepare, as appropriate, health and safety plans, demolition plans, air monitoring plans, soil transportation plans, groundwater dewatering plans, and any other plans required by federal, state, or local law. The party preparing such plans shall coordinate in good faith with the other parties and provide the other parties with a reasonable time to review and

comment on such plans in draft form before the final plan is submitted to the appropriate agency(ies).

**7.5.4 Industrial Use Standard.** *"Industrial Use Standard"* shall mean the remediation standard adopted by the agency or agencies with relevant oversight responsibility, either (i) on its or their own initiative, or (ii) in response to a request from the Port and BFG for the most cost-effective, risk-based, industrial use remediation standards and techniques for a development project in accordance with the Port's Master Plan. The Port and/or BFG shall cooperate in any reasonable appeals from agency decisions, provided neither the Port nor BFG shall be required to participate in the appeal. For purposes of clarification, "industrial use" is not intended to be narrowly construed to mean only heavy industrial (i.e. smokestack industries), but may include other commercial, retail, hotel and similar uses.

#### **7.6 Indemnity and Other Provisions.**

**7.6.1 General.** Except as otherwise expressly provided herein to the contrary, whenever this Agreement (in Section 7 or otherwise) specifies that Port or BFG shall be responsible or liable, in whole or in part, for any Environmental Costs relating to the South Campus, the Port Parcels and/or the SDG&E Parcel, the party assigned such responsibility or liability shall release, discharge, indemnify and hold harmless the other party (Port or BFG, as applicable) from all or that portion of said Environmental Costs for which the indemnifying party is responsible or liable. Except as otherwise expressly provided herein to the contrary, whenever this Agreement (in Section 7 or otherwise) specifies that City and/or Agency, on the one hand, or BFG, on the other hand, shall be responsible or liable, in whole or in part, for any Environmental Costs relating to the Agency or Rados Parcels, the party assigned such responsibility or liability shall release, discharge, indemnify and hold harmless the other party (City and/or Agency or BFG, as applicable) from all or that portion of said Environmental Costs for which the indemnifying party is responsible or liable.

**7.6.2 Internal Costs.** Each party will be responsible for its own internal costs and also for the costs of its environmental consultants and legal counsel, whether on staff or external consultants or counsel.

**7.6.3 Consequential Damages.** No party to this Agreement shall be liable or responsible for any consequential damages incurred by any other party that are caused by or result from implementation of this Agreement, including, without limitation from delays in Environmental Remediation Activities resulting from, concerning, or arising out of or in connection with the South Campus, Port Parcels, SDG&E Parcel, Rados Parcel, or Agency Parcel, or from the performance of environmental management responsibilities as set out in Sections 7.3 and 7.4 above.

**7.6.4 Penalties and Fines.** Notwithstanding anything in this Agreement to the contrary, no party shall be liable to the other party for penalties or fines imposed by a government agency if such penalties or fines result from unreasonable actions of the party incurring the penalty.

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**7.6.5 Other Funds.** Any monies or other consideration that any party to this Agreement receives (the "**Receiving Party**") from a third party, including but not limited to insurance proceeds, for payment or reimbursement of Environmental Costs resulting from, concerning, or arising out of or in connection with properties described in this Agreement or for any other purpose, shall be solely for the account of, and remain the sole and separate property of, the Receiving Party (excluding, however, monies received with respect to South Campus Environmental Costs from the Underground Storage Tank Fund or any other fund identified in Sections 7.2.9 or 7.3.1(d), which monies shall be distributed in accordance with Section 7.2.9 above), and shall not be included in any way in the accounting for or sharing of such Environmental Costs pursuant to this Section 7, and shall not otherwise be included as an offset to or reduction of any other liability or obligation which any party to this Agreement has to the Receiving Party.

## **Section 8. CLOSING**

**8.1 Closing; Closing Date.** It is the intention of the parties that all the transactions and agreements contemplated herein (with the exception of the transfer of the MTDB Parcel) shall be concluded through a concurrent closing (the "**Closing**"). It is also the intention of the parties that the Closing occur no later than September 8, 1999, or such other date as is mutually agreed to among the parties (the "**Closing Date**"). Unless the parties otherwise agree, the Closing shall not occur unless and until: (a) this Agreement and the Related Agreements have been approved by the governing bodies of each of the parties; (b) the Board of Port Commissioners has reviewed a site characterization of the South Campus and has exercised its sole and absolute discretion to proceed with the transactions and agreements contemplated herein based upon the results of the site characterization and to submit them for approval by the SLC; (c) the SLC has approved the land transfers set forth in Sections 3.1.1 and 3.1.2 and all other transactions and agreements contemplated herein for which SLC approval is legally required; and (d) except for minor and inconsequential matters, all of the obligations of each party to each of the other parties under this Agreement and the Related Agreements that are due prior to or contemporaneously with the Closing have been met.

## **Section 9. GENERAL PROVISIONS**

### **9.1 Claims and Fees.**

**9.1.1 Indemnity Obligations.** In each provision in this Agreement where any party has agreed to assume, share or retain, or to indemnify and hold any other party harmless from, a liability or obligation, such assumption, sharing, retention or indemnity and hold harmless of the other shall be deemed to mean an assumption, sharing, retention of and hold harmless from, and an indemnity against, all liability, losses, costs, expenses and damages which the party indemnified hereunder may suffer from the failure of the indemnifying party to pay or perform such assumption, sharing, retention and indemnification, and all reasonable attorneys' fees incurred in connection therewith, and costs of investigation, defense, settlement, judgments and collection thereof (such liability, losses, costs, expenses and damages are referred to as "**Claims and Fees**").

**9.1.2 Notice of Third Party Claims.** The party seeking enforcement of the obligations hereunder (the "*Notifying Party*") shall notify the other (the "*Responding Party*") within 10 days of the Notifying Party's receipt of written notice from any third party of any act, omission or occurrence with respect to which the Notifying Party intends to seek Claims and Fees in accordance with this Agreement, and if requested by the Responding Party, shall also supply to the Responding Party all records, data, contracts and documents reasonably related to such third party claim to enable the Responding Party to evaluate such claim for purposes hereof. Both parties shall attempt to agree upon a mutually satisfactory attorney to represent them and to agree upon which party shall control the defense of the claim and shall have the authority to approve any proposed settlement or compromise. If no such agreement can be reached, or if the Responding Party does not reply to the Notifying Party within 10 days from the date of such notice, each party may designate its own attorney, whose fees shall be compensable as a Claim and Fee to the party who is later determined to be entitled to be paid its Claims and Fees by the other. Whether or not any such agreement can be reached or the Responding Party does or does not reply, each party shall reasonably cooperate in providing information and testimony to assist in the defense of the matter, and the costs thereof (including out-of-pocket expenses) shall be a part of the Claims and Fees which shall be paid by the party who is later determined to be responsible therefor under the assumptions or retentions of liability and other provisions for indemnification under this Agreement.

**9.2 Force Majeure.** No party shall be held responsible or liable for an inability to fulfill any obligation under this Agreement by reason of an act of God, natural disaster, accident, breakage or failure of equipment, third-party litigation, strikes, lockouts or other labor disturbances or disputes of any character, interruption of services by suppliers thereof, unavailability of materials or labor, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disturbance, riot, or by any other severe and unforeseeable occurrence that is beyond the control of that party (a "*Force Majeure*").

**9.2.1 Notice.** Any party (the "*Affected Party*") relying on a Force Majeure shall (x) give the other parties written notice thereof within 15 days of first becoming aware of the existence of such, (y) take all such actions as are reasonably necessary or beneficial to terminate the act of Force Majeure as promptly as reasonably possible and (z) request, in writing, an extension of time which shall be granted for the anticipated period of the enforced delay, or for such longer period as may be mutually agreed upon.

**9.2.2 Efforts to Minimize.** The parties shall use their reasonable best efforts to minimize potential adverse effects from such Force Majeure.

**9.2.3 Option to Terminate.** In the event that the act of Force Majeure (x) cannot be terminated within 30 days from the date of notice thereof and the continued inability thereafter of the Affected Party to comply with the provisions of this Agreement shall cause the failure of material consideration to another party (the "*Injured Party*"), or (y) involves the failure of the party to make any of the land transfers provided for herein,

then, in either such event, the Injured Party shall have the right in its sole discretion, notwithstanding any other provision of this Section 9.2, to terminate this Agreement upon providing written notice of such termination to the other parties.

**9.3 Time of the Essence.** Time is of the essence of each and every obligation of the parties under this Agreement.

**9.4 Independent Contractors.** Each party is an independent contractor and shall be solely responsible for the employment, acts, omissions, control and directing of its employees. Except as expressly set forth herein, nothing contained in this Agreement shall authorize or empower any party to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of any other party or to bind any other party or make any representation, warranty or commitment on behalf of any other party.

**9.5 Dispute Resolution.**

**9.5.1 Mediation.** In the event of any dispute or disagreement between or among the parties arising out of or relating to the terms, conditions, interpretation, enforceability, performance, breach, or any other aspect of this Agreement or any of the Related Agreements ("**Dispute**"), such parties shall first attempt to resolve the Dispute informally. In the event the Dispute is not resolved informally, prior to and as a precondition to the initiation of any legal action or proceeding, the parties shall refer the Dispute for mediation to the nearest regional office of Judicial Arbitration & Mediation Service Inc. (JAMS), or any successor thereto or, if none, to the American Arbitration Association (AAA) (the "**ADR Provider**"). The Dispute shall be mediated through informal, nonbinding joint conferences and/or separate caucuses with an impartial third party mediator who will seek to guide the parties to a consensual resolution of the Dispute. The mediator shall be selected by mutual agreement of the parties from a list of mediators with significant experience in real estate matters to be provided by the ADR Provider. If the parties are unable to agree upon the mediator, the ADR Provider shall select the mediator. The mediation proceeding shall be conducted within 30 days (or any mutually agreed longer period) after referral, and shall continue until any party involved concludes, in good faith, that there is no reasonable possibility of resolving the Dispute without resort to a legal action or proceeding. All costs of the mediation shall be shared equally by the parties involved. Each party shall bear its own attorneys' fees and other costs incurred in connection with the mediation.

**9.5.2 Institution of Legal Action.** In the event the parties are unable to resolve the Dispute through mediation, in addition to any other rights or remedies, any party may institute a legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein or to enjoin any threatened or attempted violation thereof, to recover damages for any default, or to obtain any remedies consistent with the purpose of this Agreement.

**9.5.3 Arbitration of Specified Disputes.** Any dispute or controversy concerning or relating to environmental management matters described in Section 7.3.1(g)(3) that is not resolved by mediation in accordance with Section 9.5.1



shall be resolved by arbitration in accordance with the terms and procedures set forth in this Section 9.5.3.

(a) **Selection of Arbitrator.** The Port and BFG shall jointly select an arbitrator who shall have the following qualifications and experience: (i) licensed professional engineer; (ii) fifteen (15) years' experience in environmental remediation, (iii) experience with risk-based environmental remediation, and (iv) experience with industrial use remediation standards and techniques.

(b) **Proceedings.** The arbitration shall be conducted in the San Diego office of JAMS (or AAA, as applicable) in accordance with its commercial arbitration rules, except as specifically modified by this Section 9.5.3. If at any time JAMS ceases to exist, the arbitration shall be conducted by the local branch of the American Arbitration Association in accordance with its commercial arbitration rules, except as specifically modified by this Section 9.5.3. The parties shall be entitled to conduct discovery in accordance with California Code of Civil Procedure § 1283.05, except that the permission of the arbitrator is not necessary to conduct depositions. The parties shall each pay fifty percent (50%) of the fees charged for the arbitration.

(c) **Governing Law.** The arbitrator shall base his/her decision in accordance with the law of the State of California.

**9.6 No Joint Venture.** Nothing in this Agreement shall be deemed to create any form of business organization between the parties, including, without limitation, a joint venture or partnership.

**9.7 Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

**9.8 Notices.** All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person, sent by certified mail, postage prepaid or sent by a nationally recognized overnight courier that provides documentation of delivery.

Notices to the Port shall be addressed as follows:

San Diego Unified Port District  
3165 Pacific Highway  
P.O. Box 120488  
San Diego, CA 92112-0488  
Attention: Executive Director

With a copy to:

San Diego Unified Port District  
3165 Pacific Highway  
P.O. Box 120488

San Diego, CA 92112-0488  
Attention: Port Attorney

Notices to the City shall be addressed as follows:

City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910  
Attention: City Manager

Notices to BFG shall be addressed as follows:

BFGoodrich Aerospace Aerostructures Group  
850 Lagoon Drive  
Chula Vista, CA 91910-2098  
Attention: Art Sellgren

With a copy to:

McCutchen, Doyle, Brown & Enersen  
1331 N. California Blvd., Suite 600  
P.O. Box V  
Walnut Creek, CA 94596  
Attention: Geoffrey Robinson

And a copy to:

BFGoodrich Aerospace Aerostructures Group  
850 Lagoon Drive  
Chula Vista, CA 91910-2098  
Attention: Group Counsel

A party may change its address by giving notice in writing to the other party in the manner provided above. Thereafter, notices, demands and other correspondence pertinent to this Agreement shall be addressed and transmitted to the new address.

**9.9 Rules of Construction.** The singular includes the plural; "shall" is mandatory, and "may" is permissive. The parties acknowledge and agree that each of the parties and each of the parties' attorneys have participated fully in the negotiation and drafting of this Agreement. In cases of uncertainty as to the meaning, intent or interpretation of any provision of this Agreement, the Agreement shall be construed without regard to which of the parties caused, or may have caused, the uncertainty to exist. No presumption shall arise from the fact that particular provisions were or may have been drafted by a specific party, and prior versions or drafts of this Agreement shall not be used to interpret the meaning or intent of this Agreement or any provision hereof.

**9.10 Severability.** If any provision of this Agreement is held invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the parties. Provided, however, that if the invalidity or unenforceability of any provision of this Agreement results in a material failure of consideration, then the party adversely affected thereby shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to the other parties

**9.11 Entire Agreement, Waivers, Amendments.** This Agreement, together with the attached exhibits, constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes any and all prior versions or drafts of this or any other agreement and all negotiations or previous agreements, including, but not limited to, the Letter of Intent dated August 6, 1998, between the parties with respect to all or any part of the subject matter hereof. To the extent that there are conflicts or inconsistencies between this Agreement and any prior agreement (including, without limitation the Port Property Agreements), the provisions of this Agreement shall prevail. All waivers of the provisions of this Agreement must be in writing and signed by authorized representatives of the Port, City and BFG. The waiver by any party of any term, covenant, agreement or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition, nor shall any custom or practice which may grow up among the parties in the administration of this Agreement be construed to waive or lessen the right of any party to insist upon performance in strict accordance with all of the provisions of this Agreement.

**9.12 Further Action.** Each party agrees to take all further actions reasonably necessary to implement this Agreement.

**9.13 Exhibits.** The following exhibits are incorporated herein and made part of this Agreement.

- Exhibit A: Existing Campus (reference: Section 1.1)
- Exhibit B: New Campus (reference: Section 1.3)
- Exhibit C: Site Map (reference: Section 2.105)
- Exhibit D: Transfer Payments (reference: Section 5.1)
- Exhibit E: Covered Areas (reference: Section 2.23)
- Exhibit F: H Street Extension (reference: Section 4.2)
- Exhibit G: Marina Parkway Realignment (reference: Section 4.3)
- Exhibit H: Rados Parcel Easement Area (reference: Section 6.2.1(b))

**9.14 Parties to Bear Their Own Costs.** Except as specifically set forth in this Agreement, each party to this Agreement shall bear its own costs, including, without limitation, attorneys' and consultants' fees, incurred in connection with any negotiations, strategic planning, analysis and due diligence related to this Agreement.

**9.15 Captions.** The headings and captions in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of any of the terms of this Agreement.

**9.16 Assumption of Responsibility.** Except as otherwise expressly provided herein to the contrary, whenever this Agreement specifies that Port or BFG shall be responsible or liable for any cost, activity or other obligation, such allocation of responsibility or liability is intended to exist and apply only as between Port and BFG and shall not create or expand any responsibility or liability to any other party, and shall not preclude any claims for responsibility or liability against any other party.

**9.17 Successors and Assigns.** No interest in any right or remedy of any party under or relating to this Agreement is subject to any assignment, hypothecation or other alienation, whether voluntary or by operation of law, without the express prior written consent of each party against whom such right or remedy may be enforced, which each such party may grant or withhold in its absolute discretion. Any purported assignment without such consent shall be null and void.

**9.18 Third Parties.** Nothing in this Agreement, whether express or implied, is intended to do any of the following:

(a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it;

(b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or

(c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the day and year first above written.

Port:

SAN DIEGO UNIFIED PORT DISTRICT

By: Wayne Lindquist  
Wayne Lindquist  
Deputy Executive Director

City:

CITY OF CHULA VISTA, a municipal corporation

By: Shirley Norton  
Mayor

Redevelopment Agency:

REDEVELOPMENT AGENCY OF THE CITY OF  
CHULA VISTA, a redevelopment agency

By: Shirley Norton  
Chair

BFG:

ROHR, INC., operating as BFGOODRICH  
AEROSPACE AEROSTRUCTURES GROUP, a  
Delaware corporation and wholly owned subsidiary  
of THE BFGOODRICH COMPANY

By: G.A. Wetzel  
Name: G.A. Wetzel  
Its: Senior Vice President

Approved as to form:

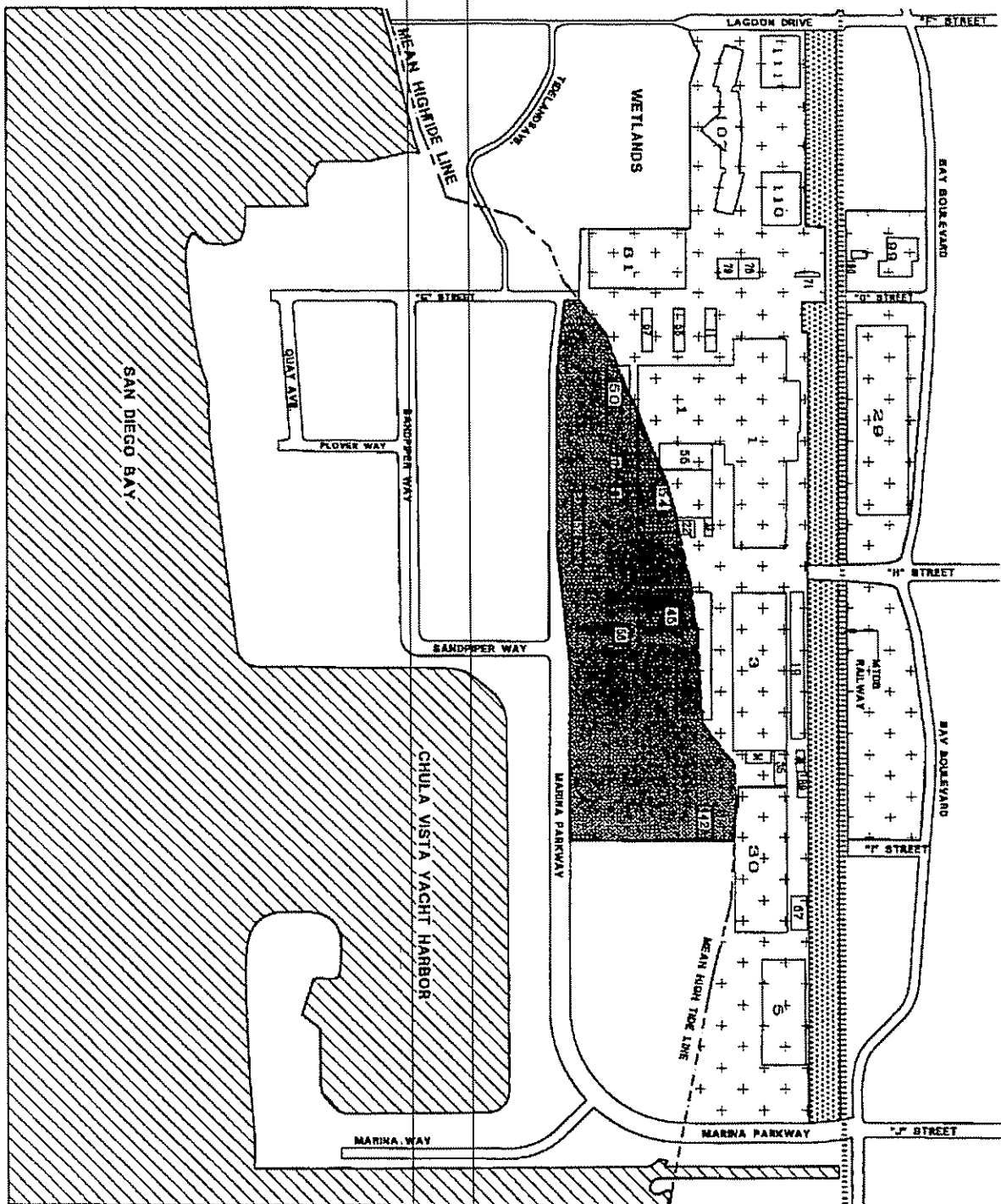
San Sorensen  
City/Agency Attorney

Approved as to form:

[Signature]  
Port Attorney

Exhibit A  
(referenced in Section 1.1)

Existing Campus



**RELOCATION AGREEMENT**  
CHULA VISTA CAMPUS

**LEGEND**

- LEASED - BDDAE
- LEASED - PORT
- BFG FEE - OWNED
- MEAN HIGH TIDE LINE
- RAIL ROAD TRACKS
- BLDG. - EXISTING

**SCALE**



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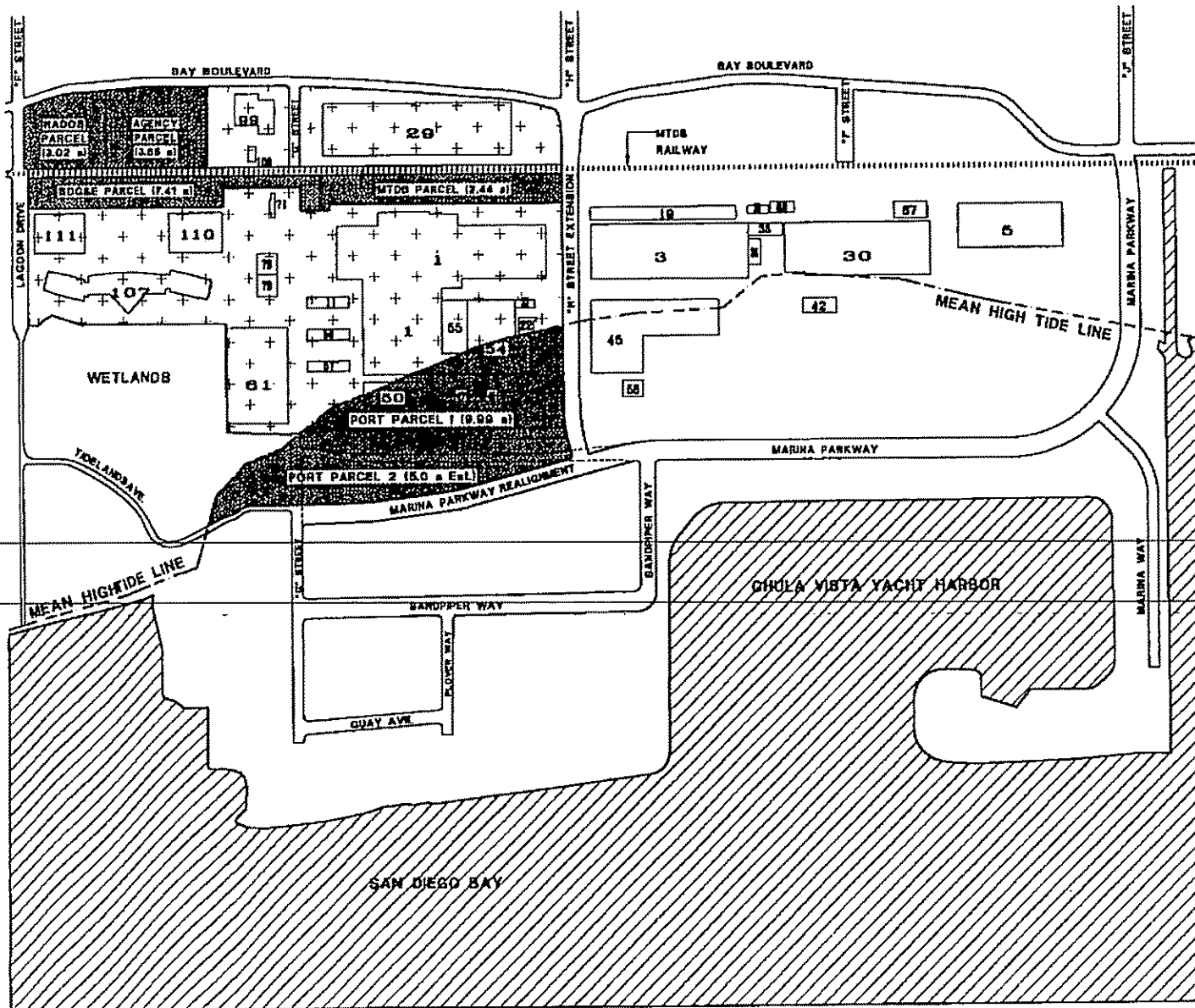
**EXHIBIT A - EXISTING CAMPUS**

Exhibit B  
(referenced in Section 1.3)

New Campus

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**RELOCATION AGREEMENT**  
CHULA VISTA CAMPUS

**LEGEND**

- BFQ FEE-OWNED
- NEW FEE LAND TO BE ACQUIRED
- MEAN HIGH TIDE LINE
- ||||| RAIL ROAD TRACKS
- ROAD - CLOSED
- ROAD - NEW
- BLDG - EXISTING

**SCALE**



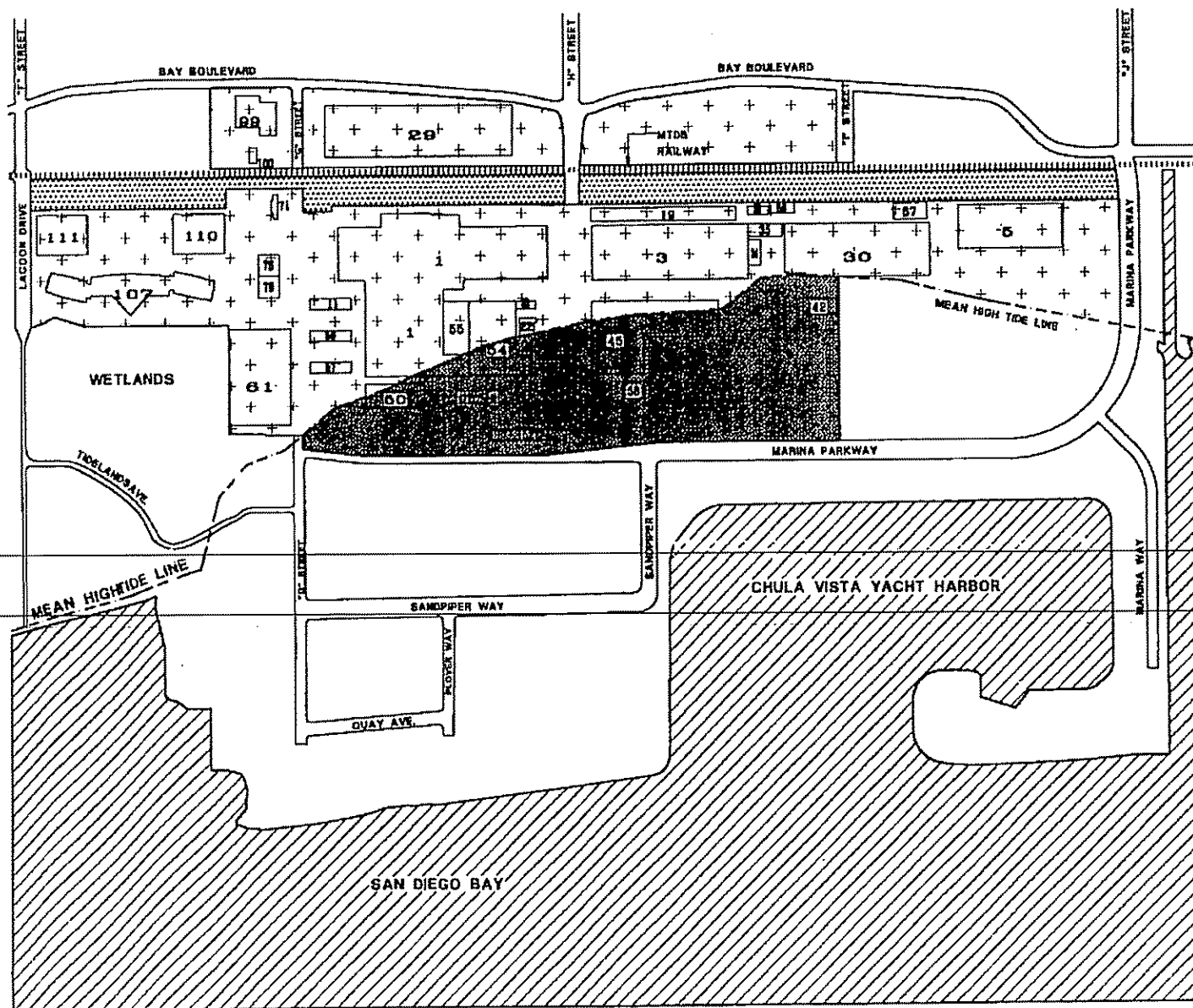
5-83

**EXHIBIT B - NEW CAMPUS**

Exhibit C  
(referenced in Section 2.105)

Site Map

5-8A



# **RELOCATION AGREEMENT** CHULA VISTA CAMPUS

## **LEGEND**

- LEASED - BLDG&E
- LEASED - PORT
- BLDG FEE - OWNED
- MEAN HIGH TIDE LINE
- RAIL ROAD TRACKS
- BLDG. - EXISTING

## **SCALE**



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Exhibit D  
(referenced in Section 5.1)

**Transfer Payments**

	Acres <sup>1</sup>	Price/SF	Amount Payable by Port to BFG <sup>2</sup>
Port Acquisition of of BFG's South Campus:	n/a	n/a	<u>\$16,467,514<sup>3</sup></u>
BFG Property Acquisitions:			Amounts Payable by BFG to Port, City
<u>From City:</u>			
Agency Parcel	3.65	\$ 8.00	\$1,271,952
Rados Parcel	3.02	\$ 8.00	\$1,052,409
<u>From Port:</u>			
Port Parcel 1	9.99	\$ 8.00	\$3,481,315
Port Parcel 2 (5.0 gross acres)	3.30 <sup>4</sup>	\$ 8.00	\$1,149,984
SDG&E Parcel	7.41	\$ 2.00	\$645,559
MTDB Parcel	2.44	\$ 2.00	<u>\$212,573</u>
Total			<u>\$7,813,792</u>
Cash Balance to BFG at Closing			<u>\$8,653,721</u>

<sup>1</sup> Acreage and resulting purchase prices subject to post Closing adjustment based upon verified parcel sizes, in accordance with Section 5.2.

<sup>2</sup> Port is also depositing into escrow \$675,639 to be applied toward Transfer Activities pursuant to Section 3.6.1 and/or disbursed pursuant to Section 3.6.3.

<sup>3</sup> This figure is based upon (i) a valuation of \$8.00 per square foot for the BFG Property based upon an estimated 37.58-acre parcel size, subject to post Closing adjustment under Section 5.2; (ii) a paving allowance of \$871,636 for the Agency and Rados Parcels; and (iii) an interest buydown of \$2,500,000.

<sup>4</sup> The price to be paid by BFG for Port Parcel 2 is based upon the current estimate of the net usable acres of the parcel, equal to 3.30 acres.

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Exhibit E  
(referenced in Section 2.23)

Covered Areas

5-87

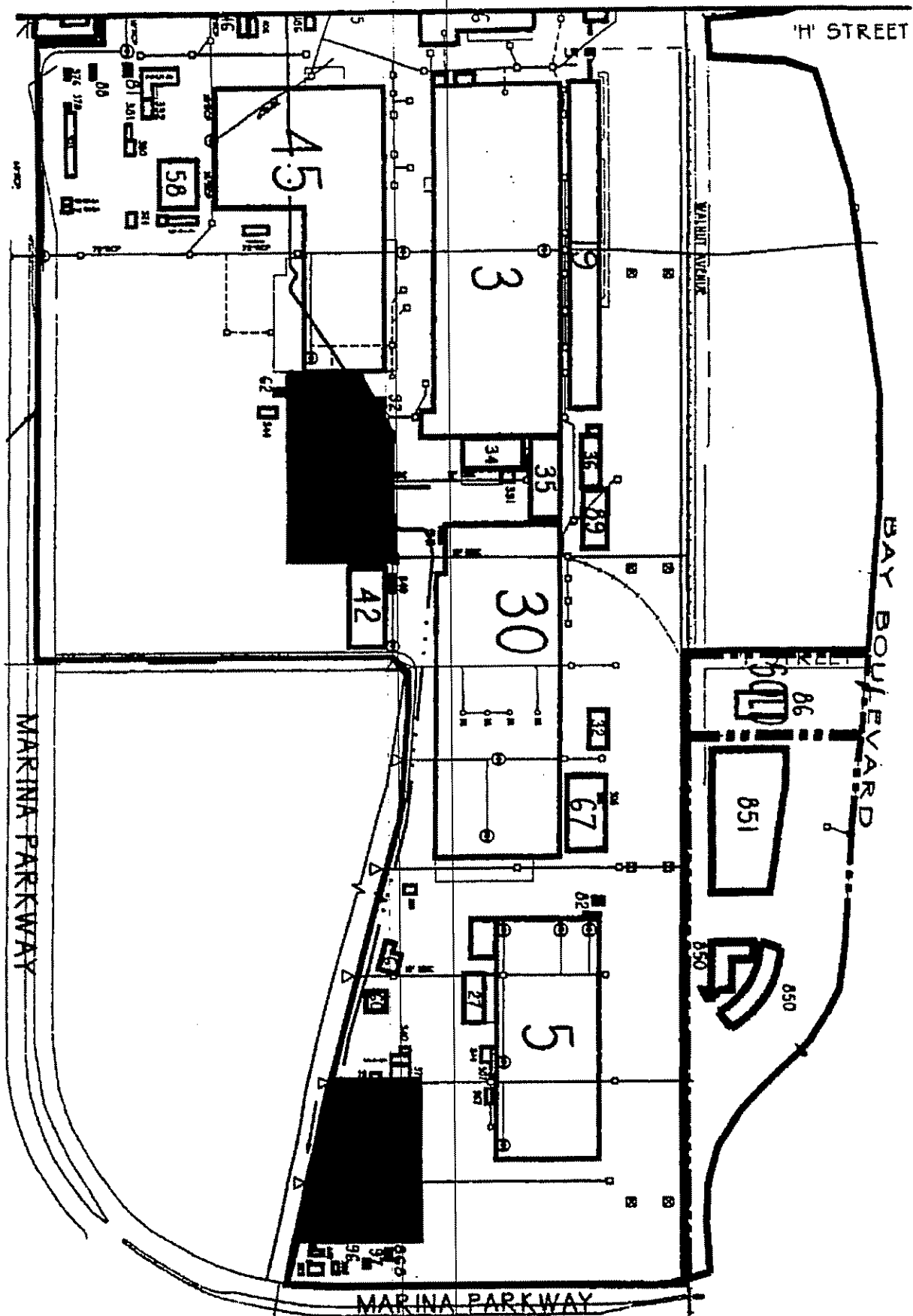
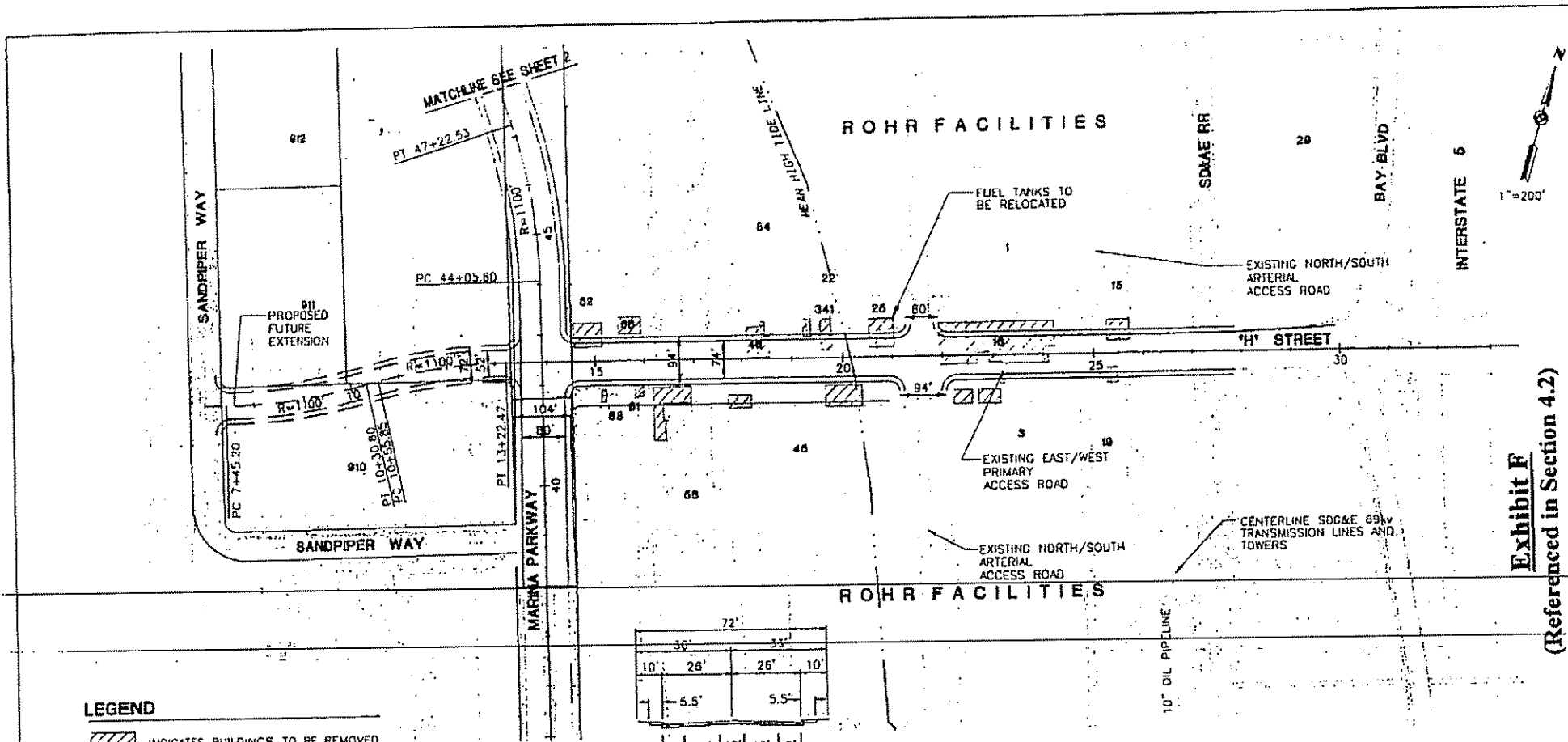


Exhibit E  
 (Referenced in Section 2.14)  
 Covered Areas

5-89

Exhibit F  
(referenced in Section 4.2)

H Street Extension

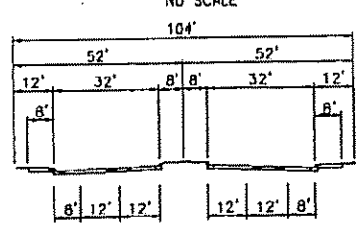


**LEGEND**

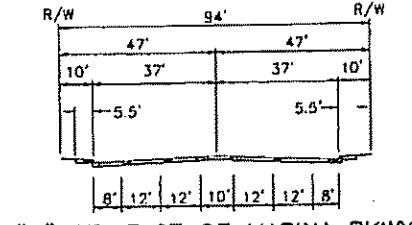
INDICATES BUILDINGS TO BE REMOVED

- 1 PRODUCTION FACILITY - LARGE ONE-STORY BLOCK STRUCTURE
- 3 PRODUCTION FACILITY - LARGE ONE-STORY BLOCK STRUCTURE
- 15 ADMINISTRATIVE OFFICES - ONE-STORY WOOD STRUCTURE
- 16 OFFICES AND CAFETERIA - TWO-STORY STUCCO STRUCTURE
- 19 ENGINEERING AND ADMINISTRATIVE OFFICES - ONE-STORY BLOCK STRUCTURE
- 22 INSPECTION FACILITY - ONE-STORY METAL AND CONCRETE STRUCTURE
- 25 TRANSPORTATION FACILITY - ONE-STORY METAL STRUCTURE
- 45 PRODUCTION FACILITY - LARGE ONE-STORY BLOCK STRUCTURE
- 51 TRANSPORTATION OFFICE - ONE-STORY BLOCK STRUCTURE
- 56 GUARD SHACK - SMALL ONE-STORY METAL STRUCTURE
- 52 OFFICE FACILITY LEASED TO THE CITY OF CHULA VISTA
- 58 PRODUCTION FACILITY - ONE STORY STEEL RIGID FRAME STRUCTURE
- 60 QUALITY ASSURANCE FACILITY - ONE-STORY WOOD STRUCTURE
- 61 GARAGE - ONE-STORY METAL STRUCTURE
- 68 SALVAGE YARD OFFICE - TRAILER
- 88 TRANSPORTATION SHOP - ONE STORY METAL STRUCTURE
- 910 WAREHOUSE - LARGE ONE-STORY CONCRETE TILT-UP STRUCTURE
- 911 WAREHOUSE - LARGE ONE-STORY CONCRETE TILT-UP STRUCTURE
- 912 WAREHOUSE - LARGE ONE-STORY CONCRETE TILT-UP STRUCTURE

**PROPOSED FUTURE EXTENSION OF  
"H" ST. WEST OF MARINA PKWY  
(CLASS 2 COLLECTOR)**



**MARINA PARKWAY EXTENSION  
(4-LANE MAJOR)**



**"H" ST. EAST OF MARINA PKWY  
(CLASS 1 COLLECTOR)**

**Exhibit F**  
(Referenced in Section 4.2)

**H Street Extension**

**PORT OF SAN DIEGO  
UNIFIED PORT DISTRICT**

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**"H" STREET EXTENSION  
ALIGNMENT 1**

---

**BOYLE**

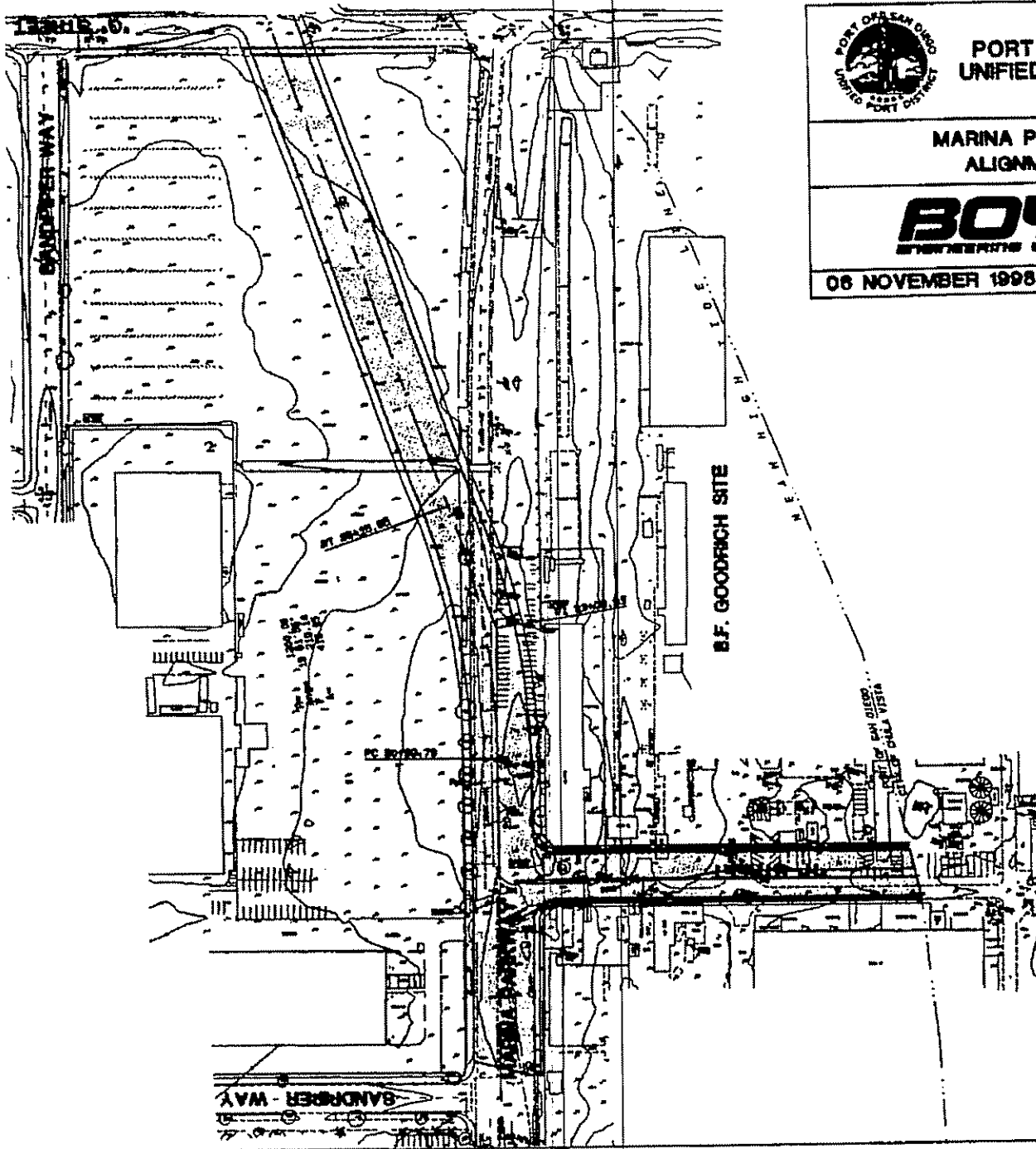
ENGINEERING CORPORATION


---

01 JUNE 1997
SHEET 1 - EXHIBIT



Exhibit G  
(referenced in Section 4.3)  
Marina Parkway Realignment



	PORT OF SAN DIEGO UNIFIED PORT DISTRICT
	MARINA PARKWAY ALIGNMENT 1
	<b>BOYLE</b> ENGINEERS CORPORATION
	06 NOVEMBER 1998   SHEET 1 - EXHIBIT A

**Exhibit G**  
(Referenced in Section 4.3)  
Marina Parkway Alignment

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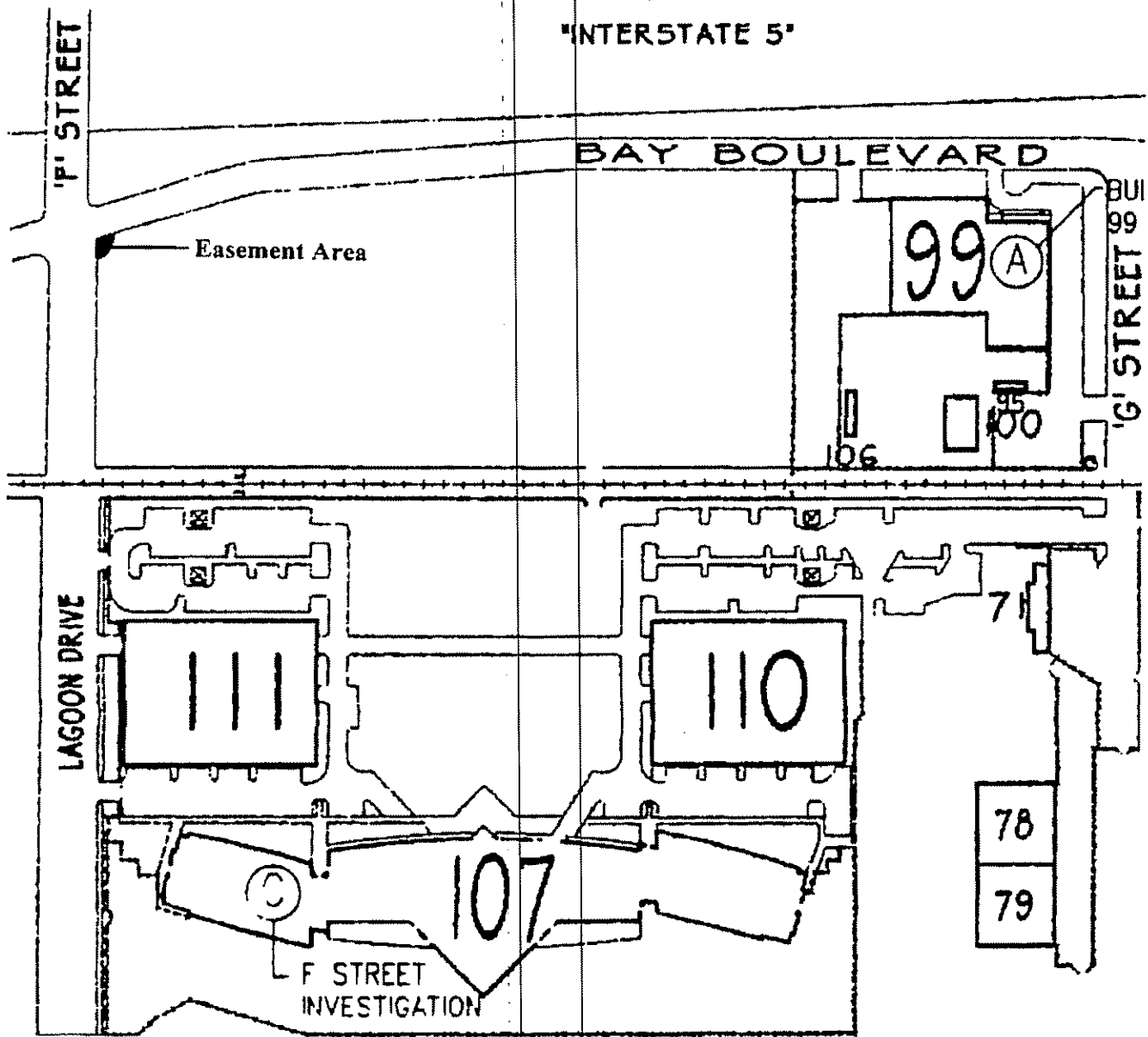
Exhibit H  
(referenced in Section 6.2.1(b))

Rados Parcel / Easement Area

- 1) The blacked-out area marked on the attached map of this Exhibit H is the Easement Area. The map is not to scale.
- 2) The size of the Easement Area shall not exceed 1,500 square feet, without BFG's prior approval.
- 3) City/Agency and BFG shall meet and confer prior to BFG's development of the Rados Parcel, or City/Agency's installation of an "entry statement" in the Easement Area. The parties shall use best efforts to insure design and architectural compatibility among the entry statement and parcel development.

bfg-ra.Exhibit.H

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**Exhibit H**  
(Referenced in Section 6.2.1(b))  
Rados Parcel/Easement Area

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## AMENDMENT TO RELOCATION AGREEMENT

THIS AMENDMENT TO RELOCATION AGREEMENT (hereinafter referred to as "*Amendment*") is made and entered into effective this 1st day of November, 1999, by and among the CITY OF CHULA VISTA, a municipal corporation ("*City*"), REDEVELOPMENT AGENCY OF THE CITY OF CHULA VISTA, a redevelopment agency formed pursuant to Health and Safety Code §§ 33000 *et seq.* ("*Agency*"), SAN DIEGO UNIFIED PORT DISTRICT, a Port District formed pursuant to Harbors and Navigations Code App. 1, §§ 1 *et seq.* (hereinafter referred to as "*Port*") and ROHR, INC., operating as BFGoodrich Aerospace Aerostructures Group, a Delaware corporation and wholly owned subsidiary of The BFGoodrich Company (hereinafter referred to as "*BFG*"). All references in this Amendment to "*City/Agency*" shall refer collectively to City and Agency. City, Agency, Port and BFG are from time to time hereinafter referred to individually as a "*party*" and collectively as the "*parties*."

A. BFG, Port and City/Agency have entered into that certain Relocation Agreement dated July 13, 1999 (the "*Relocation Agreement*").

B. The parties now wish to amend the Relocation Agreement as set forth below.

NOW, THEREFORE, the parties agree as follows:

1. All references in the text and captions of Section 7.3.1(g)(3) and (4) to "\$7 Million" are changed to "\$12 Million."

2. Section 7.2.12 is amended by deleting the second sentence and replacing it with the following: "Permanent dewatering activities shall not be permitted in connection with the development of the South Campus."

3. The following is added as new Section 7.2.15:

**"7.2.15 Onsite Incineration.** Onsite incineration shall not be permitted in connection with South Campus Environmental Remediation Activities."

4. The following is added to the end of Section 7.5.1(c)(2):

"Responsive compliance with agency directives shall be required, provided that this shall in no way alter or diminish any of BFG's or the Port's rights under this Agreement or under law."

5. Except as expressly amended hereby, the Relocation Agreement shall remain unmodified and in full force and effect. As of the effective date of this Amendment, the term "*Relocation Agreement*" shall mean the Relocation Agreement as amended by this Amendment.

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6. This Amendment has been drafted through a joint effort of the parties and their counsel and no provision hereof shall be construed in favor of or against any of the parties by virtue of any rule of construction in favor of the non-drafting party.

6. This Amendment constitutes the parties' entire agreement and understanding with respect to all matters referred to in this Amendment. There are no representations, agreements, understandings or covenants among the parties relating to the subject matter of this Amendment except as specifically set forth in this Amendment. This Amendment integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes any and all prior versions or drafts of this Amendment and all discussions and negotiations preceding it. No amendment or modification of this Amendment shall be effective unless expressly set forth in writing and executed by the parties. This Amendment may be executed in counterparts.

IN WITNESS WHEREOF, this Amendment has been executed by the parties as of the day and year first above written.

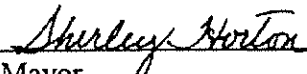
Port:

SAN DIEGO UNIFIED PORT DISTRICT

By:   
Name: D. H. McCusker  
Its: \_\_\_\_\_

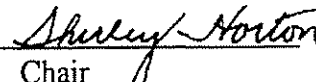
City:

CITY OF CHULA VISTA, a municipal corporation

By:   
Mayor

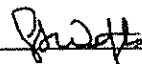
Redevelopment Agency:

REDEVELOPMENT AGENCY OF THE CITY OF  
CHULA VISTA, a redevelopment agency

By:   
Chair

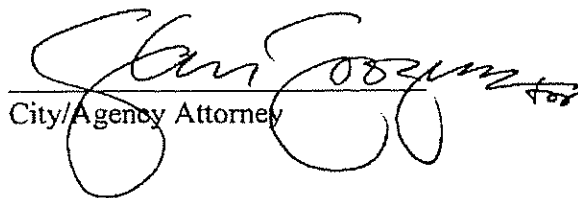
BFG:

ROHR, INC., operating as BFGOODRICH  
AEROSPACE AEROSTRUCTURES GROUP, a  
Delaware corporation and wholly owned subsidiary  
of THE BFGOODRICH COMPANY

By:   
Name: G. A. Wetglen  
Its: President

APPROVED AS TO FORM:

  
Port Attorney

  
City/Agency Attorney

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AGENCY-BFG LAND TRANSFER AGREEMENT

11/14/99

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